

# Notice of Allowability

Application No.

10/540,759

Applicant(s)

GREEN ET AL.

Examiner

Kevin K. Hill, Ph.D.

Art Unit

1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to August 16, 2007.
2. ☒ The allowed claim(s) is/are 45-52.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Q. JANICE LI, M.D.  
PRIMARY EXAMINER

### **NOTICE OF ALLOWANCE**

This action is in response to the amendment filed August 16, 2007. Applicant has cancelled Claims 1-12, 19-23 and 28, withdrawn Claims 13-18, 24-27 and 29-44, and added new claims, Claims 45-52. Applicant's new claims have been entered into the application as requested and will be examined on the merits herein, as they are considered to belong to the elected group.

The previous rejections in the Office action mailed on May 14, 2007 are withdrawn in view of the amendments.

### ***EXAMINER'S AMENDMENT***

**An Examiner's amendment to the record appears below.** Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Applicant's representative Michael Curtis, at 303-499-8080, on September 10, 13 and 14, 2007.

### ***AMENDMENTS TO THE CLAIMS***

1. The claims have been amended as follows:

Claims 13-18, 24-27 and 29-44 have been cancelled.

In claim 45, the word "nucleotide" in line 2 was replaced with the word "polynucleotide".

In claim 45, the phrase "that of" in line 2 was replaced with the phrase "set forth in".

In claim 46, the word "a", immediately preceding "polynucleotide", was replaced with the word "the".

In claim 47, the word "a", immediately preceding "genetic", was replaced with the word "the".

In claim 49, the phrase "an open reading frame" was replaced with the word "the".

In claim 49, the phrase "encoding a polypeptide of SEQ ID NO:2" was deleted.

In claim 52, the word "a", immediately preceding "genetic", was replaced with the word "the".

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In claim 52, the word “a”, immediately preceding “genetic”, was replaced with the word “the”.

Claims 45-52 have been renumbered as claims 1-8 according to 37 C.F.R. 1.126 (see MPEP 608.01(j) and 608.01(n)).

### ***AMENDMENTS TO THE SPECIFICATION***

2. On page 8, after the heading “Brief Description of Drawings”:

Lines 22-24 were replaced with “Figure 3 shows the polynucleotide sequence (SEQ ID NO:1) that encodes a multifunctional germacrene-D synthase. The sequence was obtained from a cDNA library that was constructed using mRNA extracted from *Actinidia deliciosa* petals.”

Lines 26-27 were replaced with “Figure 4 shows the predicted amino acid sequence (SEQ ID NO:2) of a multifunctional germacrene-D synthase from *A. deliciosa* petals.”

Lines 29-30 were replaced with “Figure 5 shows the polynucleotide sequences of ESTs 72838 (SEQ ID NO:3), 80968 (SEQ ID NO:4), 304951 (SEQ ID NO:7) and 82293 (SEQ ID NO:9).”

On page 9,

Lines 1-2 were replaced with “Figure 6 shows the amino acid sequences of ESTs 72838 (SEQ ID NO:5), 80968 (SEQ ID NO:6), 304951 (SEQ ID NO:8) and 82293 (SEQ ID NO:10).”

3. **The following is an Examiner’s statement of reasons for allowance:** The prior art does not teach or fairly suggest an isolated polynucleotide having the nucleic acid sequence of SEQ

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ID NO:1 encoding a multifunctional germacrene-D synthase having the amino acid sequence of SEQ ID NO:2.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


### *Conclusion*

4. Claims 45-52 are allowed.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kevin K. Hill, Ph.D. whose telephone number is 571-272-8036. The Examiner can normally be reached on Monday through Friday, between 9:00am-6:00pm EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph T. Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Q. JANICE LI, M.D.  
PRIMARY EXAMINER